

### REMARKS

Claims 1-38 are pending the present application. Claim 1, 6, and 30 have been amended to recite that the BPD/OFD ratio is taken during the first trimester of pregnancy and the at least one secondary marker measurement is taken during the first trimester of pregnancy. Support for this amendment can be found on page 5, paragraph 14 where it is stated that the BPD and OFD measurements can be taken during the first trimester and page 5-6 (Table 1) where several secondary markers are indicated as being taken during the first trimester. Further, paragraph 42 on page 17 provides that all secondary marker measurements are taken during the first trimester since all such secondary measurements were taken between 11 weeks, 1 day gestational age and 13 weeks and 6 days gestational age (*i.e.* during the first trimester of pregnancy).

### Objection to the Claims

Claims 1, 6, and 28-30 were objected to because “a priori” was not italicized. The claims have been amended to italicize this term and Applicants request withdrawal of this objection.

### Rejection of Claims Under 35 U.S.C. 103

Claims 1-30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,573,103 to Wald (“Wald”) in view of Stempfle et al Pediatric Radiology; Vol. 29, pages 682-688 (1999) (“Stempfle”).

Claims 1, 6 and 30 recite that the OFD/BPD ratio is taken during the first trimester of pregnancy and the secondary marker measurement is taken during the first trimester of pregnancy. As stated previously, the very point of Wald is to take markers from a first and second stage of pregnancy. See Abstract (“Instead of using markers from a single stage of pregnancy, the method uses markers from two or more different stages of pregnancy, one being in the first trimester and another being in second trimester.”). Therefore, even if Stempfle teaches that one marker can be a determination of the cephalic index (a point that Applicants are in no way conceding), Wald expressly teaches away from using such a measurement of the cephalic index taken during the first

PATENT  
10/679,258  
51637/76

trimester with another marker also taken at the first trimester, as recited by the present claims. For at least these reasons, Applicants submit that the present claims are not rendered obvious by Wald in view of Stempfle and request withdrawal of this rejection.

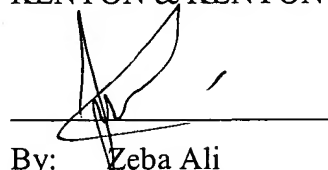
### CONCLUSION

It is respectfully submitted that the present application is now in condition for allowance, which action is respectfully requested. The Examiner is invited to contact Applicants' representative to discuss any issue that would expedite allowance of the subject application.

Any fees for extension(s) of time or additional fees required in connection with the filing of this response, are hereby petitioned under 37 C.F.R. § 1.136(a), and the Commissioner is authorized to charge any such required fees or to credit any overpayment to Kenyon & Kenyon's Deposit Account No. 11-0600.

Dated: November 14 2005

Respectfully submitted,  
KENYON & KENYON

  
By: Zeba Ali  
(Reg. No. 51,392)

1500 K Street, N.W.  
Suite 700  
Washington, D.C. 20005  
Tel: (202) 220-4200  
Fax: (202) 220-4201

590328